

REMARKS

The Office Action mailed January 8, 2004 has been received and the Examiner's comments carefully reviewed. Claims 1-9, 21, 22, 38, 39 and 52 have been allowed. Applicants thank the Examiner for this notification. Claims 24, 29, 37, 41 have been amended. Claim 53 has been added. No new subject matter has been added. Claims 48-51 have been cancelled. Claims 1-9, 17-19, 21, 22, 24, 25, 27-33 and 37-47, 52, and 53 are currently pending. Applicants respectfully submit that the pending claims are in condition for allowance.

Rejections Under 35 U.S.C. §102

I. The Examiner rejected claims 17, 19, 40 and 46 under 35 U.S.C. §102(b) as being anticipated by Anderson (U.S. Patent 4,995,383). Applicants respectfully traverse this rejection.

Anderson discloses a back brace. The back brace includes securing ends 1b and 1c, and a center part 1a.

A. Claims 17 and 19

Claim 17 recites a support device having side pieces "for applying over [each] nasal passage" of a horse. Andersson does not disclose side pieces for applying over a horse's nasal passages. Rather, securing end 1c of the Andersson back brace secures to the lumbar region of a person, and securing end 2b secures to the region of the lower or intermediate thoracic vertebrae of a person. Andersson simply does not disclose side pieces for applying over the nasal passages of a horse.

Claim 17 also recites "a bridge piece sized to extend between the first and second side pieces when the side pieces are applied to the nasal passages of the horse." Anderson does not disclose a bridge piece sized as recited. Rather, the center part 1a of the Andersson back brace is sized to extend between upper and lower regions of a person's back (FIG. 1). Andersson simply does not disclose that the center part 1a is, or could be, sized to extend between nasal passages of a horse.

Claim 17 further recites that the bridge piece comprises a strip, wherein "the strip provides different support tensions by selectively engaging the side pieces at different locations" Andersson does not disclose a strip that provides different support tensions. Rather, Andersson proposes that "the center part 1a is totally inelastic in both the longitudinal and transverse directions." Column 5, lines 20-21. Accordingly, the totally inelastic construction of the center

piece is not flexible such that "the strip provides different support tensions," as recited in claim 17. In contrast, a totally inelastic construction would provide only a rigid tension, not different support tensions.

Clearly, Andersson does not teach each and every element of claim 17. Nonetheless, the Examiner states that the device of Anderson could easily be placed on the nasal passages of a horse. In particular, the Examiner contends that span across the nose of a horse varies, so accordingly, one "could" place the back posture brace of Anderson on a horse's nose. To fit the back brace to the horse's nose, the Examiner has re-engineered the Anderson device by manipulating the end pieces of the center tape 1a to overlap outer sections of each attachment region 1d, 1e of each securing piece so that the overall length of the device is shorter.

Although the device of Anderson is adjustable to adapt to "the varying body forms of differing people," Anderson clearly does not disclose the modifications suggest by the Examiner, or that the back brace is sized to fit a horse's nose. It is respectfully submitted that the Examiner is reconstructing the Andersson back brace to fit the nasal passages of a horse. Such hindsight reconstruction is clearly improper. Moreover, without disclosure of such modifications to fit a horse's nose, Applicants submit an anticipate rejection is improper.

At least for these reasons, Applicants respectfully request withdrawal of this rejection as applied to independent claim 17 and dependent claim 19.

B. Claim 40

Claim 40 recites a support device having side pieces "for applying over [each] nasal passage" of a horse. Andersson does not disclose side pieces for applying over a horse's nasal passages. Rather, securing end 1c of the Andersson back brace secures to the lumbar region of a person, and securing end 2b secures to the region of the lower or intermediate thoracic vertebrae of a person. Andersson simply does not disclose side pieces for applying over the nasal passages of a horse.

Claim 40 also recites "a bridge piece sized to extend between the first and second side pieces when the side pieces are applied to the nasal passages of the horse." Anderson does not disclose a bridge piece sized as recited. Rather, the center part 1a of the Andersson back brace is sized to extend between upper and lower regions of a person's back (FIG. 1). Andersson simply does not disclose that the center part 1a is, or could be, sized to extend between nasal passages of a horse.

Further, for the reasons as discussed above with regards to the Examiner's statements that the device of Anderson "could" be placed on a horse's nose, Applicants respectfully submit that this rejection is improper.

At least for these reasons, Applicants respectfully request withdrawal of this rejection as applied to independent claim 40.

C. Claim 46

Claim 46 depends upon claim 40. At least for the reasons as discussed with regard to claim 40, Applicants submit that claim 46 is patentable. Further, claim 46 recites that "the bridge piece is flexible to permit selective engagement of the side pieces at different locations" The center part 1a of Andersson is not flexible. Rather, Andersson proposes that "the center part 1a is totally inelastic in both the longitudinal and transverse directions." Column 5, lines 20-21. Accordingly, Applicants submit that dependent claim 46 is patentable.

II. The Examiner also rejected claims 24, 25, 27-33, 37, 41-45 and 48-51 under 35 U.S.C. §102(e) as being anticipated by Raunig (U.S. Patent 5,817,039). Applicants respectfully traverse this rejection, but have amended claims 24, 29, 37, and 41, and cancelled claims 48-51, to advance this application to allowance. Applicants reserve the right to pursue the original subject matter via a continuing application.

Dependent claims 48-51 have been incorporated into the respective independent claims (claims 24, 29, 37 and 41). Accordingly, no new matter has been added by this amendment.

Each of independent claims 24, 29, 37, and 41 have been amended to each recite that support structures of the nasal support device are configured to lift the tissues overlying the nasal passages of the horse.

Raunig does not disclose support structures configured to lift tissues overlying first and second nasal passages. Rather, the splint 6 of Raunig is configured to merely rest upon a person's nose bridge and cheeks. Raunig also does not teach or suggest modifying the splint to lift tissues. In fact, Raunig teaches away from lifting. That is, if the aluminum splint 6 were to be configured to lift tissues of the nasal passages, a pressure point would result at the bridge of the persons' nose. Raunig teaches a splint configured to allow support of the nose bridge and effectively prevent pain resulting from pressure at particular positions of the nose. Column 2, lines 16-21.

At least because Raunig does not disclose support structures configured to lift tissues overlying first and second nasal passages, Applicants respectfully submit that claim 24, 25, 27-33, 37, 41-45 are patentable.

Allowable Subject Matter

Claims 1-9, 21, 22, 38, 39 and 52 are allowed. The Examiner objected to claims 18 and 47, but indicated that claims 18 and 47 would be allowable if rewritten in independent form incorporating all the limitations of the base claim and any intervening claims. Applicants thank the Examiner for this notification.

Claim 53 has been added. Claim 53 incorporates the subject matter of objected-to claim 47 and base claim 24. Applicants respectfully submit that claim 53 is in condition for allowance.

SUMMARY

It is respectfully submitted that each of the presently pending claims (claims 1-9, 17-19, 21, 22, 24, 25, 27-33 and 37-47, 52 and 53) is in condition for allowance and notification to that effect is requested. The Examiner is invited to contact Applicants' representative at the below-listed telephone number if it is believed that prosecution of this application may be assisted thereby.

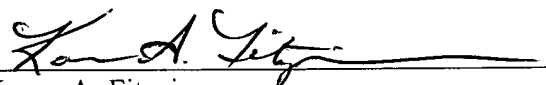
Although certain arguments regarding patentability are set forth herein, there may be other arguments and reasons why the claimed invention is patentably distinct. Applicants reserve the right to raise these arguments in the future.

Respectfully submitted,



MERCHANT & GOULD P.C.
P.O. Box 2903
Minneapolis, Minnesota 55402-0903
(612) 332-5300

Date: Feb. 27, 2004


Karen A. Fitzsimmons
Reg. No. 50,470
KAF:cjm